IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.116 OF 2004

Vidhyadhar Chintaman Satam.
Age: 45 yrs. R/at B/62,
Makar Building, Sector No.3,
Srushti, Kashimira,
Tal. & Dist.Thane.
(presently in Kolhapur Central
Jail, Kalamba) ..Appellant.

V/s.

1. The State of Maharashtra

2. Nishad V. Satam

3. Riya V. Satam

4. Dattatraya G. Thakur. ..Respondents.

Mrs.Pranali Kakade, appointed advocate for Appellant.

Mr. Y.S. Shinde, APP for Respondent No.1.

Mr.Manoj M. Kadam h/f. Shri Pratap Patil, for Respondent Nos. 2 to 4.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2007.

ORAL JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the Ad-hoc Additional District & Sessions Judge, Thane dated 14th October, 2003 in Sessions Case No.65 of 2003, whereby the appellant is convicted under section 304(I) of I.P.Code and sentenced to undergo imprisonment for a period of

five years and to pay fine in the sum of Rs.5 Lakhs in default to serve further imprisonment for a period of two years. It is further ordered that out of the fine amount sum of Rs.2 Lakhs each shall be made over to the son and daughter of the appellant/accused and Rs. One Lakh to the grand-father Dattatray for taking care of the children. The amount payable to the minor children was ordered to be deposited in post-office or a bank in their name, till they attend age of majority. The periodical interest amount was to be made over to the grand-father for the upbringing of the children.

2. The appellant was acquitted of the offence under section 302 of I.P.Code, which charge was originally framed. Instead, appellant is convicted under section 304(I) of I.P.Code as aforesaid. The prosecution case is that on the fateful day on 15th September, 2002, the appellant’s wife Ruta suffered fatal injury on the right side of her neck i.e. her vital part of the body and eventually succumbed to said injury. The appellant-husband of the deceased Ruta was found present at the scene of offence and had emerged from the bed room with blood stained knife in his hand. He warned his son Nishad not to disclose the incident to anyone. Thereafter, he went

inside the bed room and left the knife near the body of Ruta, which was lying in a pool of blood. The appellant thereafter, started communicating with the relatives on mobile phone including Supriya and Dattatray, the sister and father of Ruta-informing them that he has finished Ruta. On receiving the telephone calls relatives started assembling at the scene of offence. As intimation was given to the local police, police arrived on the spot and proceeded with the investigation of the crime. After investigation was completed, charge-sheet was filed against the appellant for offence under section 302 of I.P.Code. The appellant denied the charge and claimed to be tried. The prosecution examined in all nine witnesses. The trial Court on analysing oral as well as documentary evidence on record accepted prosecution theory of appellant being responsible for the injury caused to Ruta on her right side of the neck, to which she succumbed. The trial Court considered all minute aspects of the matter and by a well reasoned Judgment proceeded to record finding of guilt against the appellant. The trial Court negatived the defence of the appellant, in particular that Ruta committed suicide and it was not a case of homicidal death. Relevant circumstances to negative plea of suicide have been taken into account by the

trial Court. The trial Court however, then proceeded to hold that the incident in question was not premeditated. There was no evidence of preparation to commit such offence in advance. The trial Court thus found that the act of the appellant/accused as established by the prosecution amounts to culpable homicide not amounting to murder. On that reasoning the trial Court proceeded to acquit the appellant of the charge of Section 302 of I.P.Code and instead convicted him for offence under section 304(I) of I.P.Code. The State has not assailed the correctness of the view taken by the trial Court that the act of appellant amounts to culpable homicide not amounting to murder. It is the appellant/accused, who has taken exception to the finding of guilt recorded by the trial Court in the present appeal.

3. With the assistance of Mrs. Pranali Kakade, learned amicus curiae and the Public Prosecutor I have gone through the materials on record. The question, that arises for consideration in this appeal is, whether the view taken by the trial Court is a possible view or manifestly wrong. To examine this aspect, I have gone through the entire material on record with the assistance of Mrs. Pranali Kakade, learned amicus curiae espousing cause of the

appellant and the APP appearing for the State.

4. As mentioned earlier, the prosecution has examined in all nine witnesses. The prosecution to establish its case is also relying on the documentary evidence such as chemical analyser's report, panchanama, inquest report, post-mortem report and the articles used in the commission of the offence such as knife and mobile phone. On analysing the evidence on record, I have no difficulty in taking the view that the conclusion reached by the trial Court in recording finding of guilt is a possible view. I am in agreement with that view. The trial Court has carefully appreciated the entire evidence on record to reach at the said conclusion. The evidence of Supriya(P.W.1) sister of deceased Ruta and Dattatray(P.W.8) father of deceased Ruta have spoken about the telephonic contact made by the appellant himself soon after the incident. Their version has been rightly accepted by the trial court as truthful. It necessarily follows that their evidence was in the form of extra judicial confession. There is also evidence of minor son Nishad(P.W.6) and of Alpana (P.W.2) to support prosecution theory of extra judicial confession. This evidence is fully corroborated by the various

circumstances, such as presence of the accused in the house at the relevant time. There was no one else present in the house. The son of appellant-Nishad saw appellant coming out of bed room with knife in his hand. Nishad has spoken about the threat given to him by the appellant not to disclose the incident to anyone. Nishad has also spoken about appellant going back inside the bed room, keeping knife near the body of Ruta which was lying in pool of blood. Involvement of accused is also reinforced from the blood stains found on the clothes worn by the appellant at the relevant time. The blood stains resemble the blood group of deceased Ruta, as is established from the expert's evidence. Indeed, the appellant has disputed that the blood stained T-shirt belonged to him. However, the trial Court has rightly rejected that stand of the appellant relying on the panchanama. As recorded in the paragraph-17 of the impugned Judgment, blood stained clothes produced by the prosecution have been found to be worn by the appellant at the relevant time. Blood stains found on the clothes worn by the appellant lead to a reasonable belief that the appellant was very close to Ruta when she was assaulted. That inference is possible from the blood stained clothes and the manner in which blood was found sprinkled

thereon. Besides, the nature of injury caused to Ruta on the vital part of her body leave no manner of doubt that the same was involuntary. Interestingly, there was no one else in the house except their children. The above circumstance, if read with extra judicial confession, were strong enough to link the appellant to the crime in question.

5. The Court below has rightly taken note of the fact that the only defence taken by the appellant was that the deceased Ruta committed suicide. The theory of suicide will have to be straightway rejected. This is so because, as mentioned earlier, the injuries caused to Ruta were on the vital part of the body on the right side of her neck. The nature of injury was such that it leaves no manner of doubt that it was involuntarily caused by sharp edged weapon. Moreover, soon after the incident, Ruta was heard shouting to rescue her. Her son Nishad who was sleeping outside woke up and tried to open the door, but the same was locked from inside. On the basis of injury, the trial Court has rightly concluded that injuries were caused involuntarily by some other person and could not be an attempt of suicide. Possibility of causing such injury to oneself was improbable. The view so taken is a possible view.

Besides the nature of injury, there are other strong circumstances to which reference is made in the earlier part of this order indicating complicity of the appellant in the commission of the offence. It necessarily follows that the theory of suicide is untenable. The trial Court has given valid reasons for rejecting plea of suicide in paragraphs-17 and 18 of the Judgment under challenge. Accordingly, the conclusion reached by the trial Court about involvement of the appellant in commission of the crime is inevitable. As is stated earlier, the trial Court however, proceeded to hold that it was not a case of culpable homicide amounting to murder and for which reason acquitted the appellant for offence under section 302 of I.P.Code and instead convicted him for offence under section 304(I) of I.P.Code. In the fact situation of the present case, I see no reason to take a view different than the one taken by the trial Court on the merits of the case.

6. The next aspect that needs to be considered is the appropriateness of the order requiring the appellant to pay fine amount of Rs.5 Lakhs in default to suffer further imprisonment for a period of two years. According to the appellant, the only justification for requiring appellant to pay fine of

Rs.5 Lakhs, as noted by the trial Court, is that, the appellant is ambitious business minded man passing from the middle age. No other reason has been mentioned in the entire judgment. For that reason, appellant would contend that the order requiring the appellant to pay fine is unsustainable in fact or in law.

7. Indeed, the submission is partly correct. There can be no doubt that the Court has authority to impose fine or require the accused to pay compensation. However, that power is to be exercised on well established parameters such as the financial status of the accused and the like. If any authority is required to support this position, we can straightway refer to the decisions in the case of **Hari Kishan and State of Haryana V/s. Sukhbir Singh and ors.(AIR 1988 S.C.2127)** and **Shyama V/s. State of Rajasthan [(2004) 13 SCC 544].**

8. In the present case, the trial Court made no attempt to ascertain the financial position of the appellant. The appellant rightly contended that the trial Court ought to have invited the report of the probation officer, on the same lines as was done by the Apex Court in **Shyama's case(Supra).** As I found

merits in this submission, by order dated December 20, 2006, I invited report of the Probation Officer, District Thane, to provide all relevant materials concerning the appellant including his financial and economic status, as also that of the victim. The Probation Officer in turn has submitted report dated 20th February, 2007 before this Court. It is stated that visit was made on the known address of the appellant, but no relative was found in the said premises. Later on, attempt was made to elicit information from Dattatraya G. Thakur, father in law of the appellant. However, he refused to disclose any information pertaining to the appellant. The report mentions that said Dattatraya Thakur told the officer that he had no connection with the appellant. It is then stated in the report that there is no means to know the financial status of the appellant. Interestingly, although the respondent Nos. 2 to 4 have appeared in the present proceeding, no attempt has been made to bring on record the factum of financial ability of the appellant to pay the amount of Rs.5 Lakhs nor there is any material to indicate that the appellant has means to pay or that the amount can be recovered from him in any other manner. In other words, there is absolutely no material before the Court to quantify the appropriate fine

amount.

9. Indisputably, for an ordinary person with no means to pay or earn, the liability to pay sum of Rs.5 Lakhs cannot be said to be reasonable or for that matter manageable amount. Thus understood, the amount of fine quantified by the trial Court in the sum of Rs.5 Lakhs will have to be held as excessive. The next question however, that will arise for our consideration is, what should be the reasonable amount to be quantified as fine in relation to the offence in question. There can be no doubt that while considering amount of fine, the Court has not only to take into account financial position of the accused and his ability to pay such amount but also consider other factors such as necessity to compensate the victim. In the present case, the victim is not only Ruta deceased, wife of the appellant, but their children have also inevitably suffered. The children have been brought up and looked after by close-relative including father-in-law of the appellant-Dattatraya Thakur (P.W.8). He hails from an ordinary family and had to take the additional burden of bringing up two children. For bringing up one child, the maintenance amount as provided by the Statutory provision such as

section 125 Cr.P.C. can be up to Rs.1,500/- per month. It is submitted on behalf of the counsel for respondent Nos. 2 to 4 that for determining the reasonable amount of fine, the Court may take into account the legal obligation of the father to maintain his children. The statutory provision such as section 125 of Cr.P.C. provides for sum of Rs.1,500/- per month to be paid towards maintenance of one child. The appellant had two children to be looked after. After death of Ruta and as the appellant was in jail, the children were looked after by the father-in-law of the appellant. Thus, it is contended that notional amount of Rs.3,000/- p.m. be considered as the reasonable liability of the appellant to maintain his two children. In that case the appellant would be liable to pay sum of atleast upto Rs.2 Lakhs for the relevant period from the date he has been taken into custody. According to the Respondent Nos. 2 to 4, therefore, fine amount be reduced not below Rs. 2 Lakhs with further direction to make over that amount to them i.e. son and daughter of the appellant in equal proportion.

10. After having given thoughtful consideration on this issue, I am inclined to accept the submission canvassed on behalf of the Respondent Nos.2 to 4 that

the Court will have to assume the reasonable fine amount as Rs.2 Lakhs to be paid by the appellant. That amount will be commensurate with the legal obligation of the Appellant to maintain his children. As the fine amount is being reduced from Rs.5 Lakhs to Rs.2 Lakhs commensurately, the sentence period in the event of default will have to be reduced from two years to one year.

11. The Public Prosecutor has invited my attention to the communication received by him that the appellant has already completed the substantial sentence period for offence under section 304(I). At present, the appellant is undergoing sentence for the nonpayment of fine amount.

12. Taking overall view of the matter, I am inclined to hold that there is no merits in the challenge to the finding of guilt in relation to the offence punishable under section 304(I) or with regard to the quantum of sentence imposed by the trial Court. However, I am inclined to allow this appeal only to the extent of reducing the fine amount from Rs.5 Lakhs to Rs.2 Lakhs, which according to me is the reasonable amount in the fact situation of the present case. That ought to be paid by the appellant

in lieu of the higher sentence period to be imposed for the offence in question i.d. to undergo further imprisonment for a period of one year.

13. Accordingly, this appeal partly succeeds. The impugned Judgment and order is modified only to the limited extent of payment of fine from Rs.5 Lakhs to Rs.2 Lakhs i.d. the appellant to suffer further imprisonment for a period of one year instead of two years.

14. While parting the Court expresses word of gratitude towards Mrs. Pranali Kakade for the able assistance given to espouse the cause of the Appellant as Amicus Curiae.

15. Accordingly this appeal partly succeeds on the following terms.

(1) Conviction of the appellant for offence under section 304(I) is maintained.

(2) The appellant shall undergo rigorous imprisonment for a period of five years for that offence. In addition, appellant shall be liable to pay fine in the sum of Rs.2

Lakhs in default to serve further rigorous imprisonment for a period of one year. Out of the said amount of fine, Rs. One Lakh each be paid to the Son and Daughter of the Appellant. If the children are still minor, that amount be invested in post office or bank in the name of minors till they attain age of majority. The periodical interest accrued on such investment be made over to their guardian Dattatray G. Thakur(P.W.8).

(3) The Muddemal Property be disposed of in accordance with the law.